

# EXHIBIT 3

1                   - - - - - REALTIME AND INTERACTIVE REALTIME TRANSCRIPT - - - - -  
2                                   ROUGH DRAFT DISCLAIMER  
3                   - - - - -

4                                   IMPORTANT NOTICE:

5                                   AGREEMENT OF PARTIES

6       We, the party working with realtime and rough draft  
7       transcripts, understand that if we choose to use the  
8       realtime rough draft screen or the printout, that we  
      are doing so with the understanding that the rough  
      draft is an uncertified copy.

9       We further agree not to share, give, copy, scan, fax  
10      or in any way distribute this rough draft in any form  
11      (written or computerized) to any party. However, our  
12      own experts, co-counsel, and staff may have LIMITED  
13      INTERNAL USE of same with the understanding that we  
      agree to destroy our rough draft and/or any  
      computerized form, if any, and replace it with the  
      final transcript upon its completion.

14      CASE:   Larry Lee v. Air & Liquid, et al.

15      WITNESS: Michael Berryman

16      DATE:   November 18, 2015

17                   REPORTER'S NOTE:

18      Since this deposition has been in rough draft form,  
19      please be aware that there may be a discrepancy  
20      regarding page and line number when comparing the  
21      realtime screen, the rough draft, and/or rough draft  
22      disk/CD with the final transcript.

23      Also, please be aware that the realtime screen and/or  
      the uncertified rough draft transcript may contain  
      untranslated steno, reporter's notes in asterisks,  
      misspelled proper names, incorrect or missing Q/A  
      symbols or punctuation, and/or nonsensical English  
      word combinations. All such entries will be corrected  
      on the final, certified transcript.

24      Court Reporter's Name:

Rebecca Arrison

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MICHAEL BERRYMAN,

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being first duly sworn, testified as follows:

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MR. IOLA: Ryan, do you want to go

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ahead and put your stipulations on the record?

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MR. BROWNING: Yeah, yeah. Before

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we get going, this is Ryan Browning for Defendant

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J-M Manufacturing Company, Inc. Before we get

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started I wanted to put a few stipulations on the

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record. First, that an objection by one is an

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objection for all; second, that all objections

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are preserved until the time of trial, except

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those as to form; and finally, that the parties

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agree that Mr. Berryman is being sworn in

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remotely today for the purpose of this telephonic

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deposition.

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MR. IOLA: And this is Sam Iola

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for the Plaintiff Larry Lee, and all of that is

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agreed to.

Exhibit 3 - 1118BerrymanDraft  
EXAMINATION

19

20 BY MR. IOLA:

21 Q. Good afternoon, Mr. Berryman, how are you?

22 A. I'm great; how about yourself?

23 Q. I'm good.

24 Could you good ahead and please state your  
25 name and just give a spelling of the last name for

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1 the record, please.

2 A. Yes. It's Michael James Berryman, and  
3 that's B as in boy, e-r-r-y-m-a-n.

4 Q. Mr. Berryman, what is your address, please?

5 A. My office address is 426 South -- I'm  
6 sorry -- 426 North West 5th Street, Oklahoma City,  
7 Oklahoma, 73102.

8 Q. As you know, this testimony is being given  
9 in the Larry Lee case. Who are you retained by for  
10 your testimony here today?

11 A. J-M Manufacturing.

12 Q. Do you charge a retainer?

13 A. No, I usually don't.

14 Q. How about in this case?

Page 3

15 A. No, I have not in this case.

16 Q. Okay. What materials have you brought with  
17 you to this deposition?

18 A. Well, I have everything that's listed on the  
19 first page -- first or second page of my report. I  
20 have all those things here at my desk now. They are  
21 shown on my report page one and two under the heading  
22 Document.

23 Q. Okay. And for those -- for the documents  
24 that you're listing as essentially your reliance  
25 materials, did you have any input on what materials

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1 were provided to you by counsel for JMM?

2 A. No, I didn't.

3 Q. And in giving your opinions in this case and  
4 the opinions that you intend to give in this  
5 deposition today, did you rely on all of the  
6 materials provided to you?

7 A. To various degrees. I mean, I have looked  
8 them all over. Of course some are more important  
9 than others to my testimony, anyway.

10 Q. Sure. You prepared a report in this case,  
11 correct?

12 A. Yes.

13 MR. IOLA: And Madam Court  
14 Reporter, I'm going to go ahead and mark the  
15 Notice of Deposition as Exhibit 1, Mr. Berryman's  
16 Curriculum Vitae as Exhibit 2, and Mr. Berryman's  
17 Report as Exhibit 3. I'm not sure if I need to  
18 sent that to you, but I'm sure we'll work it out  
19 at the end.

20 BY MR. IOLA:

21 Q. Mr. Berryman, who would you speak with in  
22 preparation for your testimony today?

23 A. Ryan Browning.

24 Q. Okay. Have you discussed your proposed  
25 testimony with anybody else?

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1 A. I don't think so.

2 Q. Okay. Now you're charging a fee for your  
3 testimony in this case, correct?

4 A. Yes.

5 Q. You charge \$245 an hour for all preparation

6 and review prior to a deposition or trial; is that  
7 right?

8 A. That's right.

9 Q. And how many hours did you charge for the  
10 preparation and review in this case?

11 A. Well, I would have to -- I would have to get  
12 all the time sheets out and add them up. But if I  
13 had to give you a range, as I sit here, I would say  
14 it's somewhere on the order of 15 to 20 hours total.

15 Q. Okay. You also charged \$375 an hour for  
16 testimony at trial and depositions, correct?

17 A. Yes.

18 Q. Okay. On your on your Curriculum Vitae,  
19 which has been marked as Exhibit 2, you list the  
20 previous depositions and court appearances. Is this  
21 a complete and accurate account of all the times you  
22 have testified in a deposition or in court?

23 A. No. What you see shown there is accurate  
24 for the last four years.

25 Q. And approximately how many depositions or

1 testimony in court have you given prior to that

2 four-year period, prior to the last four years?

3 A. Somewhere on the order of 60 occasions, plus  
4 or minus, in addition to the ones that are shown on  
5 the CV that you're looking at.

6 Q. Okay. Does the list on your CV include  
7 cases where you were retained but did not ultimately  
8 testify or only cases where you testified?

9 A. Only cases where I testified, either  
10 deposition or trial.

11 Q. Approximately how many additional cases were  
12 you retained as an expert but did not testify?

13 A. For what time period?

14 Q. Over the same time period of the -- let's  
15 say the last four years as articulated in your CV.

16 A. Well, it would certainly just be an  
17 approximation as I sit here. But in addition to  
18 what's shown on the CV of cases, number of cases, I  
19 would say somewhere on the order of, you know, as  
20 many as 400 to 500 additional occasions.

21 Q. Okay.

22 A. Over a four-year period.

23 Q. And how many times have you been retained by  
24 an party in asbestos litigation?



25 A. Just -- I wouldn't know. I would have to

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1 go -- I would have to go research the files in order  
2 to give you an accurate answer on that.

3 Q. Well, let me try this a different way.  
4 What -- approximately what percentage of all of the  
5 either being retained as an expert or testifying as  
6 an expert, what percentage of that is asbestos  
7 litigation as opposed to other litigation?

8 A. I would say that asbestos litigation makes  
9 up probably somewhere on the order of 5 to 10 percent  
10 of my overall practice.

11 Q. Okay. What is the total amount of money you  
12 have made in your career testifying in asbestos  
13 litigation?

14 A. I don't know.

15 Q. And how many times have you been -- please  
16 strike that.

17 Of the times that you have testified or been  
18 retained in asbestos litigation, what percentage of  
19 the time are you retained by a defendant as opposed  
20 to a plaintiff?

21           A.    I haven't analyzed that, but if I -- best  
22           way to answer that is primarily I am hired by the  
23           defense not the plaintiff.

24           Q.    Have you ever been hired by a plaintiff in  
25           asbestos litigation?

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1           A.    Not that I can recall.

2           Q.    Okay. Now, how many separate defendants  
3           have retained you in asbestos litigation over your  
4           career?

5           A.    I would say, just off the top my head  
6           without research, I would say three to five.

7           Q.    Okay. Have you worked for JMM before?

8           A.    Yes.

9           Q.    How many times have you been retained for  
10          your services by JMM?

11          A.    Well, I wouldn't know the answer to that  
12          without additional research of the files, but a range  
13          would probably be somewhere in the vicinity of 25 to  
14          35 times.

15          Q.    Okay. How did you begin your career as a

16 person retained to -- who's been retained to testify  
17 in asbestos litigation?

18 A. Somehow a firm, which I believe was located  
19 in Washington, D.C., had made contact with local  
20 counsel here in Oklahoma City who had hired me on  
21 many occasions in the past and recommended me to the  
22 D.C. firm, and that's basically how I got started.

23 Q. And who was the first defendant to retain  
24 you in asbestos litigation, if you can remember?

25 A. I can't remember that. I would have to

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1 research it to give you an answer.

2 Q. Do you remember when the first defendant  
3 retained you in asbestos litigation?

4 A. No, I would have to -- I would have to  
5 research that to give you an accurate answer.

6 Q. Okay. Were you still working as a general  
7 contractor when you were first retained to testify in  
8 asbestos litigation?

9 A. Yes.

10 Q. And are you currently still working as a  
11 general contractor?

12 A. Yes.

13 Q. What percentage of your income can be  
14 attributed to your being retained or testifying in  
15 asbestos litigation versus your work as a general  
16 contractor?

17 A. Gosh, that's a -- that's a hard question to  
18 answer without quite a bit of research.

19 Q. Even -- do you have an approximation?

20 A. I would say if you -- if you took our yearly  
21 business volume, it might represent somewhere -- it  
22 would be less than 5 percent. That's probably a good  
23 answer, less than 5 percent.

24 Q. Okay. Mr. Berryman, have you ever spoken at  
25 any conferences or seminars for defense attorneys who

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1 defend clients in asbestos litigation?

2 A. Yes.

3 Q. What conference or seminar -- what  
4 conferences or seminars have you spoken at?

5 A. It was at the Perrin^ conference in Miami,  
6 Florida.

7 Q. Okay. How many times have you spoken at the  
8 Perrin conference?

9 A. One time.

10 Q. And when was that?

11 A. I would need to do some research to be able  
12 to tell you exactly when, but in the last four years.

13 Q. Okay. And what was your -- what was the  
14 topic that you presented at the Perrin conference?

15 A. I don't recall the exact name of the topic,  
16 but it was -- the subject matter was concerned  
17 construction sequencing.

18 Q. What is construction sequencing?

19 A. Construction sequencing is a discipline  
20 concerning just what it says, the sequencing of  
21 construction activities that construction of a  
22 building or a construction of a ^large follows a  
23 relatively predictable sequence of events. That's  
24 basically it.

25 Q. Have you ever been through a mock trial,

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1 mock cross-examination or a mock deposition at a  
2 defense firm, at the request of a defense firm?

3 A. No.

4 Q. Outside of opinions given in anticipation of  
5 litigation, has anyone ever asked you for your expert  
6 opinion on asbestos exposure?

7 A. I am not sure.

8 Q. Okay. Now, Mr. Berryman, I would like to  
9 direct your attention to your Curriculum Vitae. I  
10 assume you have that in front you. On the second  
11 page of your report, you state that you've worked as  
12 a general contractor for over 30 years, correct?

13 A. Actually, it says -- talking about the CV or  
14 are you talking about the report itself?

15 Q. Oh, excuse me, you're right; that is on the  
16 report.

17 So, yes, yes, on the report, you state that  
18 your opinions are based on your review of the  
19 documentation and your 36 years of experience as a  
20 general contractor; is that right?

21 A. Yes.

22 Q. So you would agree that some general  
23 principles apply to certain categories of jobs,  
24 correct?

25 MR. BROWNING: Objection.

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1 THE WITNESS: I think -- I think  
2 that's accurate.

3 BY MR. IOLA:

4 Q. You would also agree --

5 A. I think it might depend more on your  
6 specific question.

7 Q. Sure. Well, let's take general contracting  
8 work, for example. You would agree that there are  
9 certain principles in general contracting that apply  
10 from work site to work site irrespective of the  
11 location of the work site, for instance?

12 A. Yes.

13 Q. But you would also agree that each work site  
14 is different in some capacity; is that right?

15 A. Well, there's certainly differences of how a  
16 site might be laid out, the footprint of the building  
17 itself, I mean, there are differences, but a number  
18 of commonalities at the same time.

19 Q. Sure. Now, the only work sites where you  
20 know that certain actions were taken or weren't taken  
21 on that work site was if you actually worked there or

22 visited them during working hours; is that right?

23 A. Well, no, in the classical sense of no did I  
24 observe it with my own eyes, did I -- was I there  
25 personally. If that what you mean by your definition

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1 of "no," then, yes, the only way I could know in that  
2 sense is to be there.

3 Q. Okay. So for work sites that you have not  
4 personally visited and that you have not personally  
5 seen with your own eyes, as you stated, you're  
6 limited to speaking in terms of probabilities or  
7 likelihoods; is that right?

8 A. I would talk in terms of probabilities,  
9 likelihoods, expressing what are the common practices  
10 regardless of time and location, what are industry  
11 standards, regardless of time and location.

12 Q. Okay. Now, as a general contractor in your  
13 36 years of experience, how many job sites, in your  
14 career, have you been on?

15 A. Numerous. I wouldn't -- I am not even sure  
16 I could figure out how many there's been but I can  
17 tell you it's a large number.



18 Q. Would it be more likely to be in the  
19 hundreds or the thousands or tens of thousands?

20 A. I would say certainly in the thousands. I  
21 would say, if I had to make an educated guess, I  
22 would say somewhere between 7,000 and 10,000.

23 Q. Okay. Now, on this page, page two of your  
24 report, you don't list any of the work sites that you  
25 worked at during your career as a general contractor,

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1 correct?

2 A. That's right.

3 Q. Also on this page, you don't say what work,  
4 if any, specifically pertain to asbestos-containing  
5 pipe.

6 A. No. Actually, what you see on page two is  
7 just a listing of the documents. That doesn't have  
8 anything to do with my personal experience.

9 Q. Oh. Well, on any of the documents that  
10 you've provided prior to your testimony, whether that  
11 is the Curriculum Vitae, the report, or the e-mails  
12 and notes that have been provided, do you at any

point list the work sites that you had experience on as a general contractor where the focus was work on asbestos-containing pipe?

A. No.

Q. Now, what specific work, as a general contractor, do you believe is a relevant to your opinion about a salesman's exposure to asbestos from asbestos-containing pipe?

A. Well, I think importantly here, Mr. Lee has represented that he was a salesman and that he, in the capacity of his jobs responsibilities, he interfaced on a regular basis with engineers and construction personnel that would have been

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responsible for procuring his pipe. He sold to those people, and that is the same or similar to what I have done in my own career in terms of meeting with engineers on one hand and receiving bids from material men and subcontractors as a project manager and general contractor on the other end of the spectrum. And so I'm very familiar with the daily process that he would have gone through as a salesman

9 and interfacing with those two entities in selling  
10 his pipe.

11 Q. Now, when you were interfacing with  
12 engineers and you received bids, were you doing that  
13 in your capacity as a general contractor or as a  
14 salesman?

15 A. In my capacity as a general contractor but  
16 interfacing with the people that are in the sales  
17 business, because obviously people approach our firm  
18 on a regular basis to solicit our work in the  
19 purchases of materials and/or subcontract labor.

20 Q. Okay. Now, in that career and in that  
21 interfacing, on which job sites, at any point in your  
22 career, did you interact with vendors or salespeople  
23 who were selling asbestos-containing pipe or even on  
24 a work site where asbestos-containing pipe was being  
25 worked on?

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1 A. Well, I can't recall interfacing with  
2 someone specifically selling asbestos-containing  
3 pipe, but I do have lots of experience interfacing

4 with salespeople that would have been selling all  
5 forms of pipe, just like Mr. Lee testified that he  
6 did.

7 Q. Do you have any specific recollection of a  
8 specific work site on which you would have interfaced  
9 with -- either interfaced with someone who was  
10 selling asbestos-containing pipe or were around  
11 people who were working on asbestos-containing pipe  
12 at any point in your career?

13 A. I can't recall one.

14 Q. Okay. Now, is it your testimony today that  
15 your interfacing with salespeople gives you an  
16 understanding of the types of job duties and  
17 responsibilities that a salesperson like Mr. Lee  
18 would have had throughout his career at Underground?

19 A. Well, perhaps not all of their duties stem  
20 to stern. I mean, I don't know what their paperwork  
21 responsibilities were back at the home office, so to  
22 speak. But I am in a unique position to offer  
23 testimony on what most likely happened, how did he  
24 conduct himself, where did he go when he arrived at  
25 the site, what was his mission, how would he

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1 accomplish his mission. That I am able to testify  
2 about.

3 Q. And your testimony on those issues comes  
4 from your experience as a general contractor and any  
5 training which you might have had, correct?

6 A. Yes.

7 Q. Now, in your career, did you ever follow a  
8 salesperson around their job to see what their job  
9 duties included, where their work required them to  
10 be, or any shadowing of a salesperson at any time?

11 A. Sure, I have had -- I have had many  
12 salespeople work in a similar capacity as Mr. Lee.  
13 They were responsible for meeting with architects,  
14 engineers, picking up plans and specifications,  
15 understanding plans and specifications, doing  
16 take-offs as Mr. Lee described that he did,  
17 organizing bid proposals, submitting those bid  
18 proposals. I have been involved in that process  
19 myself, by myself. I have been involved in that  
20 process working with one or more individuals every  
21 step of the way in that process.

22 Q. Approximately how many salespeople would you  
23 say you have shadowed or followed to understand their

24 job duties and responsibilities?

25 A. I would say it's on the order of between 15

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1 and 20.

2 Q. Now, at any point, did you take a survey of  
3 those 15 to 20 salespeople as to their job duties and  
4 responsibilities?

5 A. No.

6 Q. Now, I want to switch gears here a little  
7 bit for a second. If I could have you turn to your  
8 Curriculum Vitae, and let me know when you are there,  
9 please.

10 A. Okay.

11 Q. Now, Mr. Berryman, under on your Curriculum  
12 Vitae under Formal Education, this shows that your  
13 only formal education is a Bachelor's degree in  
14 biology; is that correct?

15 A. Bachelor's degree in molecular biology, yes.

16 Q. Molecular biology. Excuse me.

17 Would a degree in molecular biology be  
18 integral to your job as a general contractor?

19           A.    Yes, very much so.  Not so much -- not so  
20           much what I learned in the particular discipline  
21           itself, but as you can imagine, that is a hard  
22           science at a very competitive university, and so the  
23           rigor and the curriculum that you go through to  
24           obtain that degree is very intense, and it sharpened  
25           my analytical skills.

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1           Q.    So essentially, what you're saying is it's  
2           the rigor of going through the process of obtaining  
3           the degree allowed you to apply that in your  
4           professional life'; is that right?

5           A.    Yes, that coupled with, you know, as you can  
6           imagine, to obtain a degree, you have to have  
7           significant training in mathematics, and so that's an  
8           area where there is a direct relationship between  
9           what I learned and what I use in my business life on  
10          a daily basis.

11          Q.    Was there anything -- was there any course  
12          work that went into obtaining your degree in  
13          molecular biology that substantively aided your  
14          career as a general contractor?

15 A. I don't think so.

16 Q. Now, one of the documents provided to you by  
17 defense counsel that's on your reliance list was the  
18 or the report by Dr. Holstein; is that correct?

19 A. Yes.

20 Q. And you have reviewed Dr. Holstein's report  
21 in this case; is that right?

22 A. Yes.

23 Q. You would agree that Dr. Holstein is a  
24 certified industrial hygienist; is that correct?

25 DEFENSE ATTORNEY: Objection.

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1 THE WITNESS: I don't know. Would  
2 have to look that up.

3 BY MR. IOLA:

4 Q. Well, you are not a certified industrial  
5 hygienist; is that right?

6 DEFENSE ATTORNEY: Objection.

7 THE WITNESS: I am not.

8 BY MR. IOLA:

9 Q. You have taken no formal coursework in



10 industrial hygiene?

11 A. That's true.

12 Q. You have received no certificates to suggest  
13 that you have received any training in industrial  
14 hygiene.

15 A. That's correct.

16 Q. Is there any course work or formal training  
17 that you have gone through that helped in the  
18 identification of workplace hazards and preventative  
19 methods?

20 A. Yes in the course of obtaining a licensure  
21 in various states in the United States, there are --  
22 there is coursework required to educate and  
23 familiarize one with safety standards, particularly  
24 OSHA standards, and I have participated in that  
25 coursework.

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1 Q. Besides the education on OSHA standards,  
2 what other information have you received as a result  
3 of that licensure process that pertains to  
4 identification of workplace hazards or preventative  
5 methods?

6 A. Perhaps an understanding of the nature of  
7 MSDS, sheets or material.

8 Q. Okay. Now, you are not an expert in the  
9 state-of-the-art as it relates to asbestos diseases;  
10 is that right?

11 A. That's correct.

12 Q. Now, one of the other documents provided to  
13 you by defense counsel in preparation of your  
14 deposition, and that appears in your reliance list,  
15 is a report by Dr. Maddox; is that correct?

16 A. Yes.

17 Q. And you would agree that Dr. Maddox is a  
18 pathologist; is that right?

19 A. I don't know that. I would have to get his  
20 report out and check.

21 Q. Okay. But you are not a pathologist or a  
22 medical doctor of any kind; is that correct?

23 A. That's correct.

24 Q. You would have no basis to dispute  
25 Dr. Maddox's opinion that Larry Lee has mesothelioma,

1 correct?

2 A. Correct.

3 Q. And you would have no basis to dispute the  
4 opinion that mesothelioma is caused by asbestos  
5 exposure; is that correct?

6 DEFENSE ATTORNEY: Objection.

7 THE WITNESS: Yes.

8 BY MR. IOLA:

9 Q. Okay. Now, Mr. Berryman, now I would like  
10 to turn to your report, and if you can just let me  
11 know when you have that in front of you.

12 A. Yes, I am ready.

13 Q. Okay. Did anybody help you prepare this  
14 report?

15 A. No.

16 Q. Did you author this report by yourself in  
17 its entirety?

18 A. Yes.

19 Q. Does your report contain all of your main  
20 conclusions in this case?

21 A. Yes.

22 Q. So you do not expect to give any additional  
23 testimony not contained in this report if you were  
24 asked to give additional testimony at a later time in

25 this case; is that right?

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1 A. I think that's correct, unless there is some  
2 sub-opinion that would come from this or if someone  
3 was to ask me at deposition or trial to offer  
4 examples that would be in keeping with some of the  
5 opinions that I have given or the basis for the  
6 opinions, I would be able to offer further  
7 explanation and/or examples to support what I have in  
8 my report.

9 Q. And in fact, in the report, you have  
10 reserved the right to supplement the report as  
11 needed; is that right?

12 A. Well, I have reserved the right to  
13 supplement if I received additional information that  
14 might affect my opinions.

15 Q. I understand.

16 Mr. Berry man you don't personally know  
17 Larry Lee, correct?

18 A. That's correct.

19 Q. You have never worked with him at any point  
20 during his working life?

21 A. Not that I know of.

22 Q. You have never visited any of the work sites  
23 he worked at as a salesman for Underground?

24 A. That's right.

25 Q. And in your work as a general contractor,

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1 you never occupied the same job title, position or  
2 responsibilities as Mr. Lee, correct?

3 A. Certainly not the same title or not the same  
4 position, and I'm sure not the exact  
5 responsibilities, but as I have mentioned previously,  
6 a number of the responsibilities and job duties and  
7 responsibilities that he had or same or similar to  
8 what I have experienced personally and had worked  
9 with others in my firm to undertake.

10 Q. Mr. Berryman, you never, on a day-to-day  
11 basis throughout your career as a general contractor,  
12 were a salesman for a company like Underground in a  
13 same or similar capacity as to what Mr. Lee did  
14 throughout his career?

15 A. Well, I certainly did not. I was not a

16 salesman of piping products, whether it be AC pipe,  
17 ductal iron, PVC, copper. I have not been a salesman  
18 of pipe.

19 Q. Okay. Have you received any training as a  
20 salesperson period?

21 A. No formal training.

22 Q. Okay. And you have never worked with any of  
23 the co-workers of Mr. Lee, right?

24 A. Not that I know of.

25 Q. Okay. Well, I would like to go through your

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25

1 opinions one by one. We'll go ahead and start with  
2 the first opinion.

3 Your first opinion is that: As a  
4 salesperson for Underground it is highly likely that  
5 Lee interfaced with the installation contractors and  
6 engineers away from where AC pipe was being installed  
7 or cut; is that correct?

8 A. Yes.

9 Q. Now, your first basis for this opinion is  
10 that -- is that it was typical in the construction  
11 industry for vendors to stay only in the corporate

12 office; is that right?

13 A. Well, I don't say "only." But I do say that  
14 it's of the typical construction industry that those  
15 meetings to review plans and specifications,  
16 materials and so forth, take place in a corporate  
17 office, and I say it's not -- it's -- not most often  
18 it's not located near the site. Now, occasionally it  
19 is at the site in what would be known as a job site  
20 trailer where people con office-type activities in a  
21 remote office that is on the site but still an office  
22 setting.

23 Q. Now, you would agree that Mr. Lee, in his  
24 deposition, testified to the contrary; that he would  
25 have been interacting with the pipe installation

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1 contractors and engineers at least on a weekly basis,  
2 correct?

3 A. Well, that's not what he says. He talks  
4 about interfacing. I'm sorry.

5 Q. Please continue.

6 A. He talks about interfacing with the

7 engineers, going to their offices in order to pick up  
8 plans and specifications and review plans and  
9 specifications that have a different activity from  
10 his description of going on the job site on a weekly  
11 basis to meet with a -- some person, some staff  
12 person as a general contractor or plumbing  
13 contractor, utility contractor that would have been  
14 installing the line.

15 Q. And what is the -- what is the basis for  
16 your belief that Mr. Lee's testimony was inaccurate  
17 as to the first opinion?

18 A. Well, because, based on my experience,  
19 engineers are typically not out in the field; they're  
20 in their office, they -- the tools of their trade  
21 require an office setting. They have to do  
22 calculations, they need a clean workspace, they need  
23 manuals to refer to. This day and age, much of their  
24 work is done on a computer. It's just -- it's  
25 unreasonable to think that an engineer would just be

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1 out in the field kind of working on the back tailgate  
2 of his pickup, you know, on a job site, that --



3 engineers just don't do that. If there was a  
4 engineer on site, he would be in a -- in a remote job  
5 site office trailer.

6 Q. Now, your the basis for your opinion is  
7 essentially only stemming from your experience as a  
8 general contractor, correct?

9 A. Yes, my experience as a general contractor  
10 and being able to say that I can't think of a single  
11 occasion when I would have interfaced with an  
12 engineer on site in order to obtain plans and  
13 specifications or discuss plans and specification  
14 force an upcoming project.

15 Q. Now, even though you are saying that you  
16 can't think of a single time where you saw that sort  
17 of activity, you still have to use the term likely  
18 and typical in our opinion number one because you  
19 cannot definitively dispute Mr. Lee's testimony,  
20 right?

21 A. Well, I can't say that never in the history  
22 of the United States as an engineer and not met with  
23 a piping contractor on some site to discuss plans and  
24 specifications. Is that possible? Well, sure,  
25 sometime in the last 200 years it could have

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1 occurred. But if you ask me what happens on a daily  
2 basis, coast to coast, whether it's 1940, 1960 or  
3 2015, engineers, in their environment and their tools  
4 of the trade and the drawing that they need to have  
5 on hand and the manuals that they have and the  
6 calculations that they need to perform, et cetera,  
7 are done in an office, and if somebody wants to talk  
8 to that engineer about an upcoming project, the  
9 specifications, the size of the pipe, what's planned,  
10 what's best, what product lines are available, et  
11 cetera, that's done in the engineer's office or an  
12 office setting. It's not done in the field, it's  
13 certainly not done on the back of his pickup truck.

14 Q. So if Mr. Lee had testified to the contrary,  
15 is your position that Mr. Lee is a liar?

16 A. I don't I think with respect to the  
17 engineer, he does not say he met an engineer in the  
18 field. And so if he -- if it is his testimony that  
19 he did meet an engineer in the field, I would believe  
20 that, first of all, that would be a very rare, if  
21 ever blue moon occurrence, and perhaps he is, at that

22 point in his life, misremembering what occurred.

23 Q. Okay. Well, let's turn to the second  
24 opinion. Your second opinion is that: It is likely  
25 that Mr. Lee was mistaken in his description of

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1 having been near cutting of AC pipes during his time  
2 as a salesman for Underground; is that correct?

3 A. Yes.

4 Q. Now, what specific instances, in your  
5 experience as a general contractor, leads you to this  
6 opinion?

7 A. Well, enough specific experiences that the  
8 installation of any piping is a -- goes in a more or  
9 less linear fashion and so the pipe is always  
10 advancing.

11 And so in the case of Mr. Lee where he  
12 described that there were jobs he sold that were  
13 between 2,000 and 7,000 feet, you have got to imagine  
14 that that, in the 2,000 square foot -- or lineal foot  
15 scenario, that's almost a half mile, and the 7,000  
16 that's almost a mile and a half. And when you place  
17 the pipe end-to-end in 13-foot sections and continue

18 that at the rate of 400, 500 feet per day at the head  
19 of the line where any cutting could possibly be done,  
20 is always advancing, so it would always be moving  
21 away. And the notion that a salesman would show up  
22 at job site and get out to interface with management  
23 construction personnel and then walk half mile to a  
24 mile just to see what's going on at the end of the  
25 pipe is not reasonable.

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1 Q. Now, what do you mean by it "is not  
2 reasonable"?

3 A. Well, it's just not -- there wouldn't be any  
4 reason for it, first of all. I mean, as Mr. Lee  
5 said, his reason for visiting the job site was to  
6 basically show the flag, show his customer that he  
7 was interested, care about what was going on and to  
8 make sure that the AC pipe that had been sent  
9 directly from the manufacturer, or any pipe for that  
10 matter, that had been sent by the manufacturer direct  
11 to the job site, was the appropriate pipe.

12 Well, you don't have to walk a half mile or

13 a mile to the head of the advancing line to look at  
14 the pipe storage yard to make sure that the material  
15 that was sent was appropriate.

16 Q. Now, even if it is in your opinion  
17 unreasonable, what about it being unreasonable leads  
18 you to believe that it simply did not happen?

19 A. Well, again, I suppose it's possible,  
20 anything is possible. But if you were to ask me if  
21 it's likely, I would look at that -- I would answer  
22 that, first of all, logically. It makes no sense,  
23 and I would have a hard time believing that a person  
24 would, for instance, walk a mile through some pretty  
25 harsher terrain to travel ahead of a line just to

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1 make sure it was being installed properly. Because,  
2 personally, you have got to realize, a salesperson of  
3 pipe is not involved in the quality control of how  
4 the pipe's being installed; that's completely up to  
5 the contractor. So there is no reason for him to go  
6 look at it from an installation quality control  
7 standpoint. There is no reason for him to -- there's  
8 better and easier ways to demonstrate to your client

9 that you're interested in the project and that you  
10 appreciate their business. There's easier ways to  
11 determine if the right pipe was sent to the job in  
12 the first place. You don't have to walk a mile to go  
13 figure those things out.

14 And when you think about a person that's on  
15 a commission sales, he doesn't make money walking a  
16 mile to look at the head of the line; he makes money  
17 by producing sales, and that means he goes on to the  
18 next job as soon as he can.

19 Q. For the works sites where Mr. Lee recalls  
20 being near the cutting of AC pipe while he's employed  
21 as a salesman, do you contest the existence of him  
22 being near that AC pipe or simply just the frequency?

23 A. Well, again, there is no way to say that  
24 it's impossible. It's just improbable. And on two  
25 accords, as I have explained already, it's improbable

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1 the things that I have already -- for the reasons I  
2 have already stated.

3 And it's also improbable -- well, I would

4 say primarily from that standpoint that he's -- he  
5 doesn't have any reason to be around the cutting of  
6 pipe as the line was being put in.

7 Q. You were not at any of these job sites where  
8 Mr. Lee claims he was exposed to the cutting of AC  
9 pipe, correct?

10 A. That's correct.

11 Q. Okay. Do you have any opinion on the  
12 frequency of exposure to asbestos from the cutting of  
13 AC pipe that is required to cause mesothelioma?

14 A. No, but I do have an opinion, of course,  
15 I've stated in my opinion too, in basis 2.3, I do  
16 have an opinion about the frequency as Mr. Lee stated  
17 it in his testimony, and that is that on twice a year  
18 he sold AC pipe, the size of -- length of line ranged  
19 from 2,000, 7,000 lineal feet. Based upon the 400 to  
20 500 lineal feet being installed per day that he  
21 quoted, just doing the mathematics on that, it would  
22 place him at the site over each year somewhere  
23 between five and 18 workdays.

24 Q. What is the -- what, if any, evidence do you  
25 have to support the claim that even frequency of

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1 exposure to asbestos from the cutting of AC pipe  
2 would not be enough to cause the development of  
3 mesothelioma?

4 MR. BROWNING: Objection.

5 THE WITNESS: I don't have an  
6 opinion on that.

7 BY MR. IOLA:

8 Q. Okay. Have you ever -- have you ever been  
9 around the cutting of asbestos cement pipe that you  
10 can recall with any specificity?

11 A. Not with specificity, no.

12 Q. Okay. Now, we can go ahead and turn to your  
13 last opinion. The third opinion is that: It is  
14 likely that, as a salesperson from Underground, Lee  
15 was knowledgeable in the standard practice and  
16 procedures for AC pipe, including OSHA, yet did not  
17 pay attention the guidelines; is that correct?

18 A. Yes.

19 Q. Are you an expert on OSHA?

20 A. I would consider myself an expert, yes.

21 Q. Have you had occasion to speak with the  
22 Department of Labor on the development of any OSHA  
23 rules?



24 A. No.

25 Q. Have you ever spoken with OSHA itself?

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1 A. Yes.

2 Q. What was the content of those conversations  
3 that you had with OSHA and when were they?

4 A. I would just be about job site safety  
5 conditions, working as a general contractor, and they  
6 would have occurred over the -- basically over of the  
7 last 20 years from time to time.

8 Q. So you have not participated with OSHA in  
9 the development of any formal rule making as laid  
10 forth in the Federal Register; is that right?

11 A. That's correct.

12 Q. Have you created any literature on OSHA or  
13 workplace safety?

14 A. No.

15 Q. Now, what if, any, other experiences as a  
16 general contractor makes you believe that you are an  
17 expert on OSHA?

18 A. Well, I would just point to my, you know,

19 over three decades experience as a general  
20 contractor. Of course I'm charged with the  
21 responsibility of knowing OSHA and adhering to them  
22 in my business practices, making sure it's followed  
23 by my employees over the course of a long period of  
24 time in many different venues.

25 Q. So you're experience with OSHA is in terms

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1 he have complying with OSHA rules and rule making; is  
2 that right?

3 A. Yes, understanding what's in OSHA, what are  
4 employer's responsibilities under OSHA, what should I  
5 do on a daily basis to make sure that my employees  
6 are operating safety.

7 Q. And as an expert on OSHA, you're familiar  
8 with all of the federal regulations promulgated gated  
9 by OSHA as it pertained to asbestos; is that correct?

10 A. Yes. But to say I would be able to, you  
11 know, quote them chapter and verse, sometimes with a  
12 federal regulation as large as it is, oftentimes I  
13 find I need to consult with the text in order to be  
14 sure what the regulations are.

15 Q. In your opinion, what differentiates an  
16 expert from a lay person?

17 MR. BROWNING: Objection. You can  
18 answer.

19 THE WITNESS: Well, I think a lay  
20 person would be just what you might call the man  
21 on the street, just the average person that --  
22 that would be of average knowledge about an  
23 average number of subjects like -- like the vast  
24 majority of Americans might be; for instance,  
25 whereas an expert is someone who has spent

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1 considerable time in a certain discipline, has  
2 considerable experience not only from an academic  
3 standpoint but from a hands-on experience  
4 standpoint. And to go further, a person that  
5 would -- an expert would be someone who has gone  
6 further and actually spent time in specific study  
7 of the attributes, characteristics, aspects of  
8 the work that they practice and have knowledge  
9 of.

10 BY MR. IOLA:

11 Q. And as an OSHA expert, you have certainly  
12 spent that time learning the OSHA rules governing  
13 exposure to asbestos; is that right?

14 A. Among other things, yes.

15 Q. Okay. Then as an OSHA expert, please tell  
16 me what the -- what the specific violations of OSHA  
17 regulation you see Mr. Larry Lee having done  
18 throughout his career at Underground.

19 A. Well, I can't -- I don't know all the times  
20 he might have violated OSHA during his career.

21 Q. Well, your opinion is that Mr. Low would  
22 have violated OSHA standards, correct?

23 A. Well, I don't say that.

24 Q. Well, in your third opinion, the last line  
25 says: His description of -- that being Lee -- of the

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1 pipe cutting does not comport with the OSHA  
2 guidelines in place during the time he worked at  
3 Underground.

4 Can you please explain that sentence a  
5 little bit more thoroughly.

6           A.    Okay.  Sure.  I mean, the best place to look  
7           is under basis 3.2 where, over time, and certainly  
8           during the time period that he says that he was  
9           exposed to J-M Manufacturing pipe, there were other  
10          than an rules in place that outlawed the use of a gas  
11          powered saw using a carborundum disc blade to cut  
12          asbestos pipe, unless that same tool was outfitted  
13          with localized ventilation exhaust or in itself was a  
14          ^douty tool.  And so that is the regulation that was  
15          in place.  And obviously, if someone was cutting pipe  
16          with a gas powered saw with a carborundum blade and  
17          creating dust that was being relaced into the  
18          atmosphere, that that was against OSHA guidelines.

19          Q.    And as an expert on the OSHA guidelines, you  
20          would agree that there were certain -- that there  
21          were regulations, at least by 1972, regarding the  
22          placing -- the placement of warning information on  
23          products that contained asbestos; isn't that right?

24          A.    I would need to check that.  I'm not sure  
25          that that's right.  I'm not sure that that was part

1 of OSHA.

2 Q. So are you or are you not familiar with the  
3 OSHA standards promulgated governing asbestos  
4 exposure from 1971 forward?

5 A. Well, I would consider myself familiar with  
6 it, but to be able to, you know, answer a question  
7 like that where you pluck something out of time, you  
8 know, is it or is it not true that warning labels had  
9 to be put on products or people had to be advised  
10 40 years ago, I mean, that's something that I would  
11 have to research to give you an accurate answer.

12 Q. You would agree that to be an expert in  
13 something, you need more than mere familiarity; is  
14 that right?

15 A. Yes, I think so.

16 Q. And it's your position that you only have  
17 that level of familiarity in regards to the rules and  
18 regulations promulgated by OSHA from 1971 forward  
19 concerning asbestos exposure?

20 A. No, absolutely not.

21 Q. Okay. And as you sit here today, you can't  
22 tell -- you can't tell me one way or another whether  
23 warnings were required on products at any point in  
24 time that contained asbestos?

25 A. I know that they were required what. I

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1 don't know is if that first came into being through

2 OSHA and whether it happened in 1971 or 1972.

3 I am familiar with OSHA and what's in it,  
4 what it does, what it's about, how to use it, but to  
5 be able to recall with specificity the history of the  
6 rule making when various provisions came into effect  
7 and so forth, I wouldn't be able to do without  
8 further research.

9 Q. Okay. So you couldn't, for instance, tell  
10 me what the permissible exposure level for asbestos  
11 was in 1971, correct?

12 MR. BROWNING: Objection.

13 THE WITNESS: I have an idea, but  
14 to be accurate, I want to look at it.

15 BY MR. IOLA:

16 Q. Okay. And as you sit here today, you can't  
17 tell me, as an OSHA expert, what the permissible  
18 exposure level was for asbestos in 1972?

19 A. Well, I believe it was ^12 fibers per cubic  
20 centimeter as an eight-hour time-weighted average.

21 Q. And when was the next -- when was that  
22 permissible exposure level changed next by OSHA?

23 A. I would need to research that to give you an  
24 accurate answer.

25 Q. Okay. Are you aware if JMM provided

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1 warnings on their asbestos-containing products at any  
2 point in time?

3 A. I am not sure.

4 Q. Now, as an OSHA expert, where in the 1971  
5 regulation which you provided for the deposition here  
6 today or any OSHA regulation concerning asbestos,  
7 does any of the rule making apply to salespersons as  
8 opposed to any other workers?

9 A. Well, OSHA applies to all employees, all  
10 people in the labor workforce, whether they're in  
11 sales, they're plumbers, carpenters, salespeople,  
12 OSHA applies to all.

13 Q. Okay. OSHA also applies to employers,  
14 product manufacturers; is that right?

15 A. It applies to all employers in the safe



16 working environment that they are charged with  
17 providing for their employees.

18 Q. So would you or would you not agree that  
19 OSHA regulations applying to asbestos exposure also  
20 applied in some way to product manufacturers?

21 A. Well, as I said, OSHA strictly applies to  
22 employers in providing a safe work being environment  
23 for their employees.

24 Q. Okay. And you believe that if you have the  
25 time to become more familiar with the asbestos

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1 regulations from -- propagated by OSHA from 1971  
2 forward, that you could be an expert on those OSHA  
3 regulations as opposed to just OSHA generally; is  
4 that correct?

5 A. I consider myself to be an expert on OSHA,  
6 but if you're asking me do I have it memorized every  
7 time OSHA changed their fiber standards from 1971  
8 forward, no, I don't have those dates memorized, I  
9 don't have the details of that memorized. I would  
10 have to research those details, because there's just  
11 too many of them, there's too many details that would

12 need to be memorized in order to answer all of the  
13 questions that you have asked concerning history and  
14 when their standards were changed concerning fiber  
15 release.

16 Q. Okay. But you would agree that for your  
17 opinion in this case, if there was an OSHA violation  
18 by Larry Lee or any of the workers he was around  
19 during the cutting of asbestos cement pipe, it would  
20 be that the exposure levels were above the  
21 permissible exposure levels or they were using  
22 improper techniques; is that right?

23 A. No.

24 MR. BROWNING: Objection.

25 THE WITNESS: Certainly the later.

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1 I mean, I am not speaking to -- in my report or  
2 in my testimony in this matter, I am not speaking  
3 one way or the other as to whether the fibers  
4 that may have existed in the air at the time that  
5 Larry Lee might have been around, whether they  
6 exceeded permissible levels or not.

7                   What I am speaking to is my  
8           understanding of OSHA as a general contractor and  
9           what's permissible and the use of a specific  
10          piece of equipment to cut pipe as Larry Lee  
11          described was used, and that that use of that  
12          type of saw has he described it is contrary to  
13          OSHA standards.

14               Q.   Okay.  Now, in this third opinion in  
15          basis 3.1, you cite -- you indicate that Lee's  
16          description of AC pipe being cut away with the saw  
17          and this dust that blew up everywhere is contrary to  
18          the work practices established by the AC Pipe  
19          Producers Association; is that correct?

20               A.   Yes.

21               Q.   And can you tell us what the AC Pipe  
22          Producers Association is?

23               A.   Yes.  It's a basically a trade organization  
24          made up of asbestos cement pipe producers.

25               Q.   Okay.  And so some of those companies would

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1           includes Atlas Asbestos Company; is that correct?

2           A.   I am not sure.  I would have to look that up

3 to see if they were a member at that time.

4 Q. Well, it's in the documents that you have  
5 produced, specifically this manual. If you turn to  
6 page 20, and let me know when you're there, please.  
7 Page 20 of the ACPPA manual?

8 A. Yes, I have that.

9 Q. Where it says AC pipe produced in  
10 association of regular members, do you see that?

11 A. Yes.

12 Q. And it says, Canadian, Johns Manville  
13 Company, correct?

14 A. Yes.

15 Q. And it says Cement Asbestos Products  
16 Company; is that correct?

17 A. Yes.

18 Q. And the Certainteed Corporation?

19 A. Yes.

20 Q. And Johns Manville Sales Corporation, which  
21 appears to be basically Johns Manville U.S.A.; is  
22 that right?

23 A. Well, it says Johns Manville Sales  
24 Corporation. That's what I'm reading.

25 Q. Okay. And you would agree that every

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1 company on this list either sold asbestos to AC pipe  
2 companies or were an AC pipe company who purchased  
3 asbestos; is that right?

4 MR. BROWNING: Objection.

5 THE WITNESS: You don't know that  
6 for sure.

7 BY MR. IOLA:

8 Q. Okay. What part of this ACPPA manual  
9 applies to salespeople?

10 A. I'm not sure what you mean when you say  
11 "applies."

12 Q. Well, if you look through the manual,  
13 there's pages -- it says recommended work practices  
14 for AC pipe, and it shows workers working with AC  
15 pipe, proper cutting, proper machine techniques,  
16 proper hole cutting. Which of this applies to  
17 salespeople?

18 A. Well, I think these are the recommended work  
19 practices for AC, pipe so anyone that would be  
20 involved in working with AC pipe, I believe these are  
21 the recommended practices that they should and did

22 follow.

23 Q. So it's your position that Mr. Lee, as a  
24 salesperson, was involved in the work of AC pipe?

25 A. I don't think he had any testimony where he

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1 said that he held the pipe, cut the pipe. So he's  
2 not doing anything with the pipe. The standard  
3 practices of working with the pipe just wouldn't come  
4 into play as far as he is concerned him personally.

5 Q. Okay. So you -- do you have any evidence,  
6 as you sit here, that Mr. Lee would have received any  
7 instruction about this manual or the manual itself?

8 A. I don't know whether he did or didn't.

9 Q. Do you have any knowledge as to whether this  
10 ACPA manual was created for the purpose of defending  
11 against lawsuits from plaintiffs with mesothelioma  
12 and other asbestos-related diseases?

13 MR. BROWNING: Objection.

14 THE WITNESS: I don't know  
15 anything about that.

16 BY MR. IOLA:

17 Q. Do you have any evidence, as you sit here,

18 that Mr. Lee received any instruction about OSHA  
19 standard or any information from this ACPPA manual?

20 A. No, I don't have any evidence of that.

21 MR. IOLA: I think those are all  
22 of my questions. If I can just have 30 seconds  
23 to review my notes.

24 Okay. Those are all of my  
25 questions. I would just like to reserve on the

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1 record the opportunity to redepose Mr. Berryman  
2 if he offers any additional opinions not  
3 contained in his report, or if he reviews any  
4 additional documents before trial. I appreciate  
5 your time, Mr. Berryman. Thank you.

6 THE WITNESS: Thank you.

7 MR. BROWNING: I have nothing  
8 further.

9 THE WITNESS: Ryan, do you think I  
10 could get a copy of that to read and sign.

11 MR. BROWNING: Yeah, absolutely.

12 (The deposition concluded at 4:05 p.m.)

Exhibit 3 - 1118BerrymanDraft

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